

CWP No.7494 of 2019 (O&M)

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.7494 of 2019 (O&M)

Date of Decision.12.05.2022

Parveen Chopra @ Rinka and another

...Petitioners

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Sandeep Singh, Advocate
for the petitioners.

Ms. Kirti Singh, DAG, Haryana.

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JAISHREE THAKUR J. (ORAL)

1. By way of instant writ petition, petitioners seek quashing of order dated 10.05.2018 (P-9) passed by respondent No.3, District Magistrate, Karnal whereby arms licence No.2717/DM/KL of petitioner No.1 and dealership licence No.06/DM/KL of 2001, 3/296/2001-4 HG III; 5/DM/KL of 2001 and 97-4 HG III issued in favour of petitioner No.2 have been revoked and order dated 29.11.2018 (P-10) passed by respondent No.2-Divisional Commissioner, Karnal Division, Karnal vide which appeal preferred against the order passed by the District Magistrate, Karnal has been dismissed.

2. In brief, the facts are that the petitioner No.1 is holder of aforesaid arms licence and of arms dealership licence, being proprietor of petitioner No.2. Petitioner No.1 was nominated as an accused in FIR No.312 dated 14.04.2016 registered under Section 302, 307, 201 IPC read with Sections 25 of the Arms Act, 1959 in which he has been acquitted vide judgment dated 24.03.2017 passed by the Additional Sessions Judge, Karnal. When the petitioner was under custody during the course of trial in the aforesaid FIR, District Magistrate,

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Karnal issued a show cause notice dated 23.07.2016 to explain as to why his personal arms licence be not cancelled. As the petitioner No.1 was under custody, said show cause notice was never served upon him nor could he respond to the same. While the matter was pending before the District Magistrate, Karnal, petitioner No.1 stood acquitted and vide letter dated 23.08.2017, he was afforded last opportunity to appear on 01.09.2017. Petitioner No.1 duly appeared before the District Magistrate, Karnal on 01.09.2017, however, he was informed that matter had been adjourned and the next date will be intimated to him later on. As the petitioner No.1 had to visit United States of America, he filed an application dated 06.09.2017 to apprise the District Magistrate, Karnal that as he was under custody till 24.04.2017, therefore, he could not get his arms dealership licence renewed and therefore, proceedings qua cancellation of arms dealership licence be dropped and the same be renewed. However, to the utter shock of the petitioner No.1, District Magistrate, Karnal passed order on 01.09.2017 itself whereby his personal arms licence as well as the arms dealership licences were cancelled. As the petitioner No.1 had left for United State of America, he received the order dated 01.09.2017 passed by the District Magistrate, Karnal on his return on 10.10.2017. The impugned order gave reference to show cause notice dated 23.07.2016, which was only with respect to his personal arms licence. Aggrieved against the order dated 01.09.2017, petitioner No.1 filed an appeal before the respondent No.2-Divisional Commissioner, Karnal, who vide order dated 22.03.2018 set aside order dated 01.09.2017 and remanded the matter back for fresh adjudication by District Magistrate, Karnal. On remand, the matter was considered afresh by the District Magistrate, Karnal and vide impugned order dated 10.05.2018 (Annexure P-9) again ordered for cancellation of personal

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arms licence of petitioner No.1 as well as arms dealership licences issued in favour of petitioner No.2. The appeal filed against the said order also stood dismissed vide order dated 29.11.2018 (Annexure P-10) passed by respondent No.2 and hence, the writ petition.

3. Mr. Sanjeev Sharma, learned Senior Advocate assisted by Mr. Sandeep Singh, Advocate, appearing for the petitioners would contend that the Licensing Authority while passing the impugned order has completely ignored the fact that the petitioner No.1 has been acquitted in the FIR No.312 dated 14.04.2016 under Section 302, 201, 307 IPC and Section 25 of the Arms Act registered at Police Station Civil Lines, Karnal. It is further contended that observations made while passing the impugned order that mere non-tracing of the used weapon does not prove that the petitioner No.1 has not violated the conditions of the licence when he suffered a disclosure statement and one magazine and three live cartridges of 33 bore pistol were recovered in pursuance to said disclosure statement, are wholly unsustainable. It is argued that mere recovery of live cartridges cannot be a ground to revoke the arms licence especially in view of the finding rendered by the trial court that recovery of magazine and cartridges will be of no consequence in the absence of recovery of weapon. The petitioner No.1 has been acquitted by the trial court after appreciation of evidence. It is further argued that an arms licence can only be suspended or revoked in terms of provisions contained under Section 17(3) of the Arms Act and the impugned orders are passed without assigning any reason that the weapon possessed by the petitioner No.1 was used by him in commission of any offence or the petitioner No.1 by his conduct or by omission had posed any threat to the security of the public peace or public safety. In support of his arguments, reliance has been placed on the judgments rendered in

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Mahendra Singh Vs. State of U.P. and others 2014 SCC online ALL 93230; M/s Anand Armoury Vs. Govt. of N.C.T. of Delhi and others 2010; Krishna Autar Vs. Commissioner, Jhansi Division and another 1990(2) All WC 1458. Even the show cause notice dated 23.07.2016 was issued only qua personal arms licence of petitioner No.1 and therefore, arms dealership licence issued in favour petitioner No.2 have been cancelled without issuing any show cause notice and therefore, the impugned orders are liable to be set aside.

4. Learned counsel appearing on behalf of the respondent-State would submit that the petitioner No.1 has been acquitted by giving benefit of doubt. It is contended that the impugned orders are well reasoned and have been passed after giving appropriate opportunity of hearing to the petitioners and on due deliberation of all facts and circumstances and therefore, prays for dismissal of the instant petition.

5. I have heard learned counsel for the parties and have perused the paper book. Section 17(3) of the Arms Act deals with the provisions of suspension or revocation of an arms licence, which is reproduced as under:-

“17.(3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence—

(a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or

(b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or

(c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by

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the holder of the licence or any other person on his behalf at the time of applying for it; or

(d) if any of the conditions of the licence has been contravened; or

(e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence.

5. A bare perusal of the aforesaid provisions of Section 17(3) would reveal that an arms licence can be suspended or revoked primarily in following circumstances:-

(a) if the holder of the licence is disqualified from acquiring/possessing or carrying any arms by this Act or by any other law for the time being in force; or is of unsound mind or unfit for any reason for a licence under this Act;

(b) for the security of public peace or for public safety;

(c) obtained licence by suppressing material information or on the basis of wrong information;

(d) conditions of licence contravened or the holder of the licence failed to comply with notice under sub-section (1) requiring him to deliver up the licence.

6. Admittedly, there is no finding given in the impugned orders that the fire arms owned by the petitioner were ever used or misused in the criminal case registered against him, especially when the petitioner No.1 has been acquitted by the trial court, though by giving benefit of doubt or that there is any threat extended by petitioner No.1 to the public peace or public safety on the strength of said fire arms or the petitioner is disqualified by any provisions of the Arms Act or of any law, for the time being in force, from acquiring/possessing/carrying any firearm. Involvement in a criminal case may be a matter for consideration by the authorities regarding threat to the security of

public peace or public safety but cannot be a sole ground while ordering

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cancellation of arms licence, without rendering a finding qua threat to such peace or safety in the manner enunciated under Section 17(3)(b) of the Arms Act.

7. In view of the aforesaid finding, the instant petition is allowed and the impugned orders, suffering from the perversity as noted above, are set aside. The matter is remitted back to respondent No.3, District Magistrate, Karnal for fresh consideration in view of the provisions of Section 17(3) of the Arms Act and decide the same as expeditiously as possible, preferably within a period of three months from the date of receipt of certified copy of this Court.

8. Needless to say, the petitioner No.1 shall be afforded an opportunity of hearing before taking a decision by respondent No.3.

(JAISHREE THAKUR)
JUDGE

May 12, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No